

ORDER NO. 79894

IN THE MATTER OF THE CONTINUING
INVESTIGATION OF THE PURCHASED
GAS ADJUSTMENT CHARGES OF
WASHINGTON GAS LIGHT COMPANY.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8509(bb)

Before the Public Service Commission (“the Commission”) in this matter is an Application for Reconsideration and/or Clarification by the Office of People’s Counsel (“OPC”) of Commission Order No. 79633 in this proceeding.¹ In Order No. 79633, issued on November 24, 2004, the Commission granted in part appeals and requests for clarification filed both by Washington Gas Light Company (“WGL” or “the Company”) and by OPC.

In Order No. 79633, the Commission upheld its long-standing view that WGL bears the burden of proof in its purchased gas proceedings. The Commission also clarified certain aspects of the Proposed Order of Hearing Examiner that had been rendered in the case on June 16, 2004, and affirmed the rest. Specifically, the Commission declined, as proposed by the Hearing Examiner, to require the filing of a joint report regarding various gas purchasing issues, including: the Company’s hedging program; its asset management contract; and its purchase of firm capacity entitlements. Additionally, the Commission declined to require the parties to reach agreement on the types of practices that satisfy the statutory requirement to ensure competitive practices for

¹ Hereinafter referred to as OPC’s request for reconsideration and clarification.

procuring and purchasing fuel at reasonable prices under *MD. CODE ANN.*, Public Utility Companies Article, § 4-402. It is regarding this ruling that OPC seeks reconsideration and/or clarification.

In its request for reconsideration and clarification, OPC suggests that the Commission's rulings in Order No. 79633 would require a party to support a recommendation to disallow unjustified charges in a company's purchased gas cost case by presenting both an alternative procurement practice and a quantification of the amount by which such an alternative procurement practice would result in lower purchased gas costs. OPC believes such a standard is inappropriate.

On March 28, 2005, WGL filed a reply to OPC's request for reconsideration and clarification.² In its reply, WGL noted that OPC's request for reconsideration essentially repeats the arguments raised by OPC and decided in Order No. 79633.

The statute, § 4-402(b), provides that: "A ... company that directly passes on to its customers changes in fuel costs, costs of purchase power, or costs of purchased gas shall verify and justify the adjusted costs to the Commission each month." Subsection (c) of § 4-402 provides that:

- (c) "The Commission shall order a company to charge off and amortize, by means of a temporary decrease of rates, any charge the Commission finds is unjustified because:
 - (1) the company failed to show that the charges were based solely on increased costs of fuel, purchased power, or purchased gas;
 - (2) the company failed to follow competitive practices in procuring and purchasing fuel, power, or gas; or

² Referred to herein as WGL's reply.

(3) the company failed to show that its practices in procuring and purchasing fuel were reasonable.”

Thus, both the statute and the Commission are consistent in holding that it is the company that bears the burden of proof in purchased gas cost proceedings. In reading OPC’s Request for Reconsideration and/or Clarification, it appears that OPC is concerned about the implications of a portion of Order No. 79633; specifically, one paragraph appearing at pages 5-6 of that order. The paragraph reads as follows:

However, OPC should bear in mind that the Commission’s task in quantifying a disallowance is eased if the proponent of the disallowance provides not only an alternative procurement methodology, but also a demonstration of the amount by which the Company’s gas costs exceed gas costs under the alternative method. Absent such a showing, a company’s defense that there are no alternative methods, or that an alternative method is either more expensive than or the same as the company’s method, would be uncontested.

To allay any concerns from OPC, the Commission notes that the above-quoted paragraph follows a paragraph in which the Commission reaffirms that it is the company that bears the burden of proof in purchased gas proceedings, and that if it fails to meet its burden, it faces disallowances. The quoted paragraph deals with what happens *after* a disallowance has been found to be necessary; that is, *after* the determination has been made that the company did not carry its burden of proof. Thus, the paragraph does not address, much less alter, burden of proof issues, so the Commission affirms Order No. 79633 on this point.

As to OPC’s request for clarification, the specific concept that the Commission expressed in the quoted paragraph was that the proponent of a disallowance serves its own purposes by providing the Commission with the party’s recommendation on the

amount to be disallowed. The Commission provided two suggestions to parties advocating disallowances: (1) show the Commission what the party's alternative procurement method is; and (2) what is the difference in purchased gas costs that would be realized had the party's alternative method been used. Thus, to the extent expressed above, OPC's request for clarification is granted.

As stated in Order No. 79633, the Commission does recognize the concerns raised by the parties with regard to certain difficulties in probing the Company's gas purchasing strategies and practices on an after the fact basis. For that reason, the Commission expressly stated that the Company should consider the concerns and suggestions raised by OPC and Staff in Case No. 8509(bb), as well as those noted by the Hearing Examiner in the case. Thus, the Commission noted that the Company would be wise to consider informal discussions of its procurement practices with Staff and OPC before or in connection with its purchased gas cost filings.

However, the fact remains that after a company meets its burden of proof, the burden of production rests with opposing parties to demonstrate the unreasonableness of the Company's procurement and purchasing practices. In this regard, the Commission does not find that OPC has presented any new, different or more persuasive argument in this matter than has already been decided by the Commission in Order No. 79633. Accordingly, the Commission denies the request for reconsideration.

IT IS, THEREFORE, this 11th day of April, in the year Two Thousand and Five, by the Public Service Commission of Maryland,

ORDERED: That the Application for Reconsideration and/or Clarification of Commission Order No. 79633 filed by the Maryland Office of People's Counsel is hereby DENIED except to the extent that clarification of Order No. 79633 is expressed herein.

By Direction of the Commission,

O. Ray Bourland
Executive Secretary